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From: Williams, Monica A. [MOWILLIA@SOUTHERNCO.COM]
Sent: Thursday, September 01, 2011 3:45 PM
To: Filings@psc.state.fl.us
Subject: Gulf's Motion for Ruling regarding MDS Cost-of-Service Study and Alternative Petition for Waiver of Rule 25-6.043(1)(a)1

Attachments: Gulf's Alternative Petition for Rule Waiver.pdf

- A. s/Terry Davis
Gulf Power Company
One Energy Place
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850.444.6231
tadavis@southernco.com
- B. Docket No. 110138-EI
- C. Gulf Power Company
- D. Document consists of 9 pages
- E. The attached document is Gulf Power Company's Motion for Ruling regarding MDS Cost-of-Service Study and Alternative Petition for Waiver of Rule 25-6.043(1)(a)1.

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DOCUMENT NUMBER-DATE

06322 SEP-1 =

FPSC-COMMISSION CLERK

9/1/2011

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September 1, 2011

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0850

Dear Ms. Cole:

RE: Docket No. 110138-EI

Attached is Gulf's Motion for Ruling regarding MDS Cost-of-Service Study and Alternative Petition for Waiver of Rule 25-6.043(1)(a)1.

Sincerely,

A handwritten signature in cursive script that reads "Terry A. Davis".

mw

Enclosures

cc: Beggs & Lane
Jeffrey A. Stone, Esq.

DOCUMENT NUMBER-DATE

06322 SEP-1 =

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates)
by Gulf Power Company)
_____)
)

Docket No. 110138-EI

In re: Alternative Petition for Waiver)
of Rule 25-6.043(1)(a)1)
_____)

Docket No. _____

Date Filed:

**GULF'S MOTION FOR RULING REGARDING MDS COST-OF-SERVICE STUDY
AND ALTERNATIVE PETITION FOR WAIVER OF RULE 25-6.043(1)(a)1**

Gulf Power Company (Gulf) moves the Commission for a ruling that the instructions for Schedule E-1 of the Minimum Filing Requirements (MFRs) do not preclude Gulf from filing, or the Commission from considering, a proposed cost-of-service study that utilizes the Minimum Distribution System methodology. In the alternative, if Gulf's motion is denied, Gulf petitions for a waiver of the MFR instructions to permit it to file such a study for the Commission's consideration. In support thereof, Gulf states:

Background

1. Gulf filed a petition for rate increase on July 8, 2011. Pursuant to Rule 25-6.043, the petition was accompanied by Gulf's MFRs and the prepared direct testimony of its witnesses. On July 18, 2011, the Commission staff notified Gulf that it had reviewed the filing and determined that Gulf "has met the minimum filing requirements imposed by [Rule 25-6.043]."

2. Gulf's MFRs contain two cost-of-service studies. One cost-of-service study was prepared using the methodology approved by the Commission in Gulf's last rate case (the "prescribed cost-of-service study"). The other was prepared using a Minimum Distribution System (MDS) methodology (the "MDS cost-of-service study"). The prepared direct testimony

of Mr. O'Sheasy explains the advantages of the MDS cost-of-service study and supports its use by the Commission in this case.

3. On July 29, 2011, the staff served its fourth set of interrogatories on Gulf. This set of interrogatories included Interrogatory No. 40, which asked:

Schedule E-1 of the MFR for Investor Owned Electric Utilities (Commission Form PSC/ECR/011-E) states that "the minimum distribution system must not be used" in cost of service studies. Since the MFRs are incorporated into Rule 25-6.043 by reference, state whether Gulf intends to request a rule waiver to use the minimum distribution system methodology? If so, please explain the basis for the rule waiver.

4. Gulf's response to Interrogatory No. 40 set forth Gulf's understanding that the MFR instructions for Schedule E-1 require a utility to submit a prescribed cost-of-service study which does not use the MDS methodology, but that the instructions do not preclude a utility from submitting an alternative study using that methodology. The response further stated that Gulf was considering filing an appropriate pleading to obtain a determination by the Commission of the effect of this MFR instruction. (A copy of Gulf's full response is attached as Exhibit A.) This motion and alternative petition for rule waiver followed.

MOTION FOR RULING REGARDING MDS COST-OF-SERVICE STUDY

5. The question posed by Gulf's motion for a ruling regarding its MDS cost-of-service study is whether Rule 25-6.043 and the MFR instructions incorporated in the rule by reference are intended to preclude a utility from filing an MDS study *in addition to* a required study that does not employ the MDS methodology.

6. The general filing instructions for electric utility rate cases contained in Rule 25-6.043(1)(a)1 state that:

(a) The petition under Sections 366.06 and 366.071, F.S., for adjustment of rates must include or be accompanied by:

1. The information required by Commission Form PSC/ECR/011-E (2/04), entitled "Minimum Filing Requirements for Investor-Owned Electric Utilities" which is incorporated into this rule by reference.

7. The "Explanation" for MFR Schedule E-1 begins with the following instruction:

Provide under separate cover a cost of service study that allocates production and transmission plant using the average of the twelve monthly coincident peaks and 1/13 weighted average demand (12 CP and 1/13th) method. In addition, if the company is proposing a different cost allocation method, or if a different method was adopted in its last rate case, provide cost of service studies using these methods as well.

The explanation then continues with 4-1/2 additional paragraphs that identify various study requirements, including a statement that "The minimum distribution system concept must not be used." (A complete version of the Schedule E-1 instructions is attached as Exhibit B.)

8. Gulf submits that the prohibition on the use of the MDS concept was intended to apply only to the prescribed study identified in the first sentence of the instructions. By filing a study in the prescribed format, Gulf has complied with the requirement of Rule 25-6.043 that the petition "must include or be accompanied by ... *the information required by*" the MFR form.

(Emphasis added) The information required by Schedule E-1 is a study meeting the standards set forth in the first sentence and in the other provisions of the instructions.¹ An alternative study proposed by the utility is *permitted* by the instructions; it is not *required* by them.

9. Gulf acknowledges that Staff's Interrogatory No. 40 reflects a possible reading of the MFR instructions. However, this interpretation should be rejected for several reasons:

¹ As noted above, the staff has determined that Gulf's filing, which includes the prescribed cost-of-service study, meets the requirements of the rule.

a. First, it would preclude Gulf, or any other investor-owned-utility (IOU), from advocating the use of the MDS concept when the utility believes that such a study is the most accurate method of allocating distribution system costs.

b. Second, Section 366.06(1), Fla. Stat., provides that “in fixing fair, just and reasonable rates for each customer class,” the Commission is required to consider, to the extent practicable, “the cost of providing service to the class ...” An interpretation that precludes filing an MDS study would arbitrarily limit the Commission’s consideration of all cost of service approaches and would be inconsistent with this statutory duty.

c. Third, an interpretation that prohibits an IOU from submitting an MDS cost-of-service study would be inherently unfair, since other parties to rate proceedings are under no similar prohibition. For example, in Florida Power & Light Company’s most recent rate proceeding, the intervenor South Florida Hospital and Healthcare Association was permitted to advocate the use of the MDS concept.²

d. Finally, such an interpretation would result in disparate treatment for IOUs over which the Commission exercises rate making jurisdiction and municipal or cooperative utilities over which the Commission exercises rate structure jurisdiction. Because only IOUs are subject to the MFR instructions, municipal and cooperative utilities are free to propose the use of the MDS concept in developing the rate structures they submit to the Commission for approval. In fact, the Commission has previously approved the use of that approach by one cooperative.³

WHEREFORE, for the reasons stated above, Gulf moves the Commission for a ruling that the instructions for Schedule E-1 of the Minimum Filing Requirements (MFRs) do not

² *In re: Petition for increase in rates by Florida Power & Light Company*, Docket No. 080677-EI, Order No. PSC-10-0153-FOF-EI (March 17, 2010) at page 171.

³ *In re: Petition for approval of modification of electric rate schedules by Choctawhatchee Electric Coop., Inc.*, Docket No. 020537-EC, Order No. PSC-02-1169-TRF-EC (August 26, 2002).

preclude Gulf from filing, or the Commission from considering, a proposed cost-of-service study that utilizes the Minimum Distribution System methodology.

ALTERNATIVE PETITION FOR RULE WAIVER

10. In the alternative, if Gulf's motion is denied, Gulf petitions pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, for a waiver of Florida Public Service Commission (PSC or Commission) Rule 25-6.042(1)(a)1 to the extent necessary to permit Gulf to file, and the Commission to consider, its MDS cost-of-service study. The following information is provided pursuant to Rule 28-104.002(2).

11. The petitioner is Gulf Power Company. The mailing address for petitioner at its headquarters is One Energy Place, Pensacola, Florida 32520 and its telephone number is (850) 444-6111.

12. Notices and communications with respect to this petition should be addressed to:

Jeffrey A. Stone, Esquire
Russell A. Badders, Esquire
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Susan D. Ritenour
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13. Gulf is seeking a waiver of the "Explanation" for Schedule E-1 of Florida Public Service Commission Form PSC/ECR/011-E (2/04), which form is incorporated by reference in Rule 25-6.043(1)(a)1, Florida Administrative Code (the "Rule"), to the extent such form precludes Gulf from filing a cost-of-service study utilizing the Minimum Distribution System (MDS) concept as an alternative to the prescribed cost-of-service study required by such form.

14. Insofar as applicable to this petition for waiver, the Rule implements Section 366.04(2)(f) which allows the PSC “to prescribe and require the filing of ... data as may be reasonably available and as necessary to exercise its jurisdiction” and Section 366.06(1) which states that “all applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed....”

15. The application of the Rule to preclude Gulf from filing an MDS cost-of-service study in support of its request for rate relief would create a substantial legal hardship within the meaning of Section 120.542(2), Florida Statutes, by:

a. preventing Gulf from having the Commission consider the cost-of-service principles that Gulf believes are the most appropriate basis for setting rates for its various classes of customers, notwithstanding the Commission’s statutory obligation under Section 366.06(1), Florida Statutes, which requires that:

In fixing fair, just and reasonable rates for each customer class, the Commission shall, to the extent practicable, consider the cost of providing service to the class....

and

b. unduly discriminating against Gulf, who would be legally prohibited from advocating the MDS concept when other parties to its rate proceedings are under no similar prohibition.

16. The requested waiver will achieve the purpose of Section 366.06(1) within the meaning of Section 120.542(2) by providing the Commission with information practicably available to it to consider the cost of providing service to Gulf’s various classes of customers. By providing more (not less) information than the Commission otherwise requires, the purpose of both Sections 366.04(2)(f) and 366.06(1) to ensure that the Commission has adequate information to exercise its jurisdiction will be achieved.

17. Gulf requests a permanent waiver in order to avoid the necessity of addressing the waiver issue in future rate case filings; however, Gulf would accept a temporary waiver for purposes of Commission Docket No. 110138-EI if the Commission were to conclude that a permanent waiver is not appropriate at this time.

WHEREFORE, for the reasons stated above, and in the event the Commission denies Gulf's motion for a ruling that the filing of an MDS cost-of-service study is not precluded by the instructions to MFR Schedule E-1, Gulf requests a permanent waiver of the provisions of Rule 25-6.043(1)(a)1 to the extent necessary to permit the filing of such a study in Docket No. 110138-EI and in future rate cases.

RESPECTFULLY SUBMITTED this 1st day of September, 2011.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for Increase in Rates)
by Gulf Power Company)
_____)

Docket No. 110138-EI

In re: Alternative Petition for Waiver)
of Rule 25-6.043(1)(a)1)
_____)

Docket No. _____

Date Filed:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail this 1st day of September, 2011, on the following:

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